HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 2429 of 2001

Nasim Ahmad vs. Secretary Nagar Vikash Vibhag & others.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 19.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition No. 2429 of 2001 (SS)
(Old No. 27733/1998)

Nasim Ahmed s/o Sri Shafiq Ahmed,
Resident of House No.42B, Ward No.19
Khatima, District Udham Singh Nagar ……. Petitioner

Versus

1. Secretary, Nagar Vikas Vibhag, Anubhag VI
   U.P. Shasan Lucknow.
2. Chairman, Nagar Palika Parishad, Khatima
3. Executive Officer, Nagar Palika Parishad
   Khatima ……. Respondents

Sri Dinesh Gahtodi, Advocate for the petitioner
Sri Sandeep Tandon, Advocate for the respondents No.2 and 3.

Standing Counsel, U.P. for respondent no.1.

Dated: 19.11.2003

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioner has prayed for the issue of a writ order or direction in the nature of certiorari quashing the order dated 30.6.1998, annexure-7 to the writ petition.

Brief facts giving rise to the present writ petition are that the petitioner was given appointment on 16.7.1997 as Toll Moharir. On 3.8.1991 the petitioner was promoted to the post of Clerk in the grade of 950-1500 and he was further confirmed on the post of Clerk on 3.8.1991. It has been stated by the petitioner that order dated 3.8.1991

was cancelled on 26.2.1992. The petitioner has stated that again on 1.4.1992 order dated 26.2.1991 was recalled and the order dated 3.8.1991 was restored. The petitioner has stated that while passing the order competent authority has clearly stated that there are 10 posts of clerks including typist and the work and conduct of the petitioner was found satisfactory. On 25.2.94, the petitioner was confirmed on the post of clerk but all of a sudden on 13.6.1998, the confirmation order of the petitioner was cancelled.

The petitioner has assailed the order on the ground that order dated 25.63.1998 was passed without any authority and without giving any opportunity to the petitioner.

Counsel for the petitioner has stated that the order dated 25.2.94 confirming the petitioner was passed to the following effect.

आपको सूचित किया जाता है कि आपके प्रार्थनापत्र दिनसंक 1.1.94 के अवलोकनोपरान्त अध्यक्ष महोदय के आदेश दिनांक 1.1.94 के अनुसार आपको लिपिक पद पर स्थायी किया जाता है ।

Order passed on 13.6.98 has civil consequences and opportunity should have been given to the petitioner before recalling order of promotion.

The Apex Court in the case of State of Orissa vs. Dr. Binapani Dei and others AIR 1967 SC 1269 has observed that the administrative orders which involve civil consequences have to be

passed consistently with the rules of natural justice. The observations of the Apex Court are quoted below:

"An order by the State to the prejudice of a person in derogation of his vested rights may be made only in accordance with the basis rules of justice and fairplay. The deciding authority it is true, is not in the position of a Judge called upon to decide an action between contesting parties, and strict compliance with the forms of judicial procedure may not be insisted upon. He is, however, under a duty to give an opportunity to set up his version of defence and an opportunity to correct or to controvert any evidence in the possession of the authority which is sought to be relied upon to his prejudice. For that purpose the person against whom an enquiry is held must be informed of the case he is called upon to meet, and the evidence in support thereof. The rule that party to whose prejudice an order is intended to be passed is entitled to a hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. It is one of the fundamental rules of our constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would , therefore, arise from the very nature of the function intended to be performed: it need not be shown to be super-added. If there is power to decide and determine to the

prejudice of a person, duty to act judicially is implicit in the exercise of such power. If the essentials of justice be ignored and an order to the prejudice of a person is made, the order is nullity. That is a basic concept of the rule of law and importance thereof transcends the significance of a decision in any particular case."

Sri Sandeep Tandon, appearing on behalf of Nagar Palika Parishad has stated that the appointment was temporary and as such he could not have been confirmed on that post. He also stated that age relaxation has not still been granted by the Director, Local bodies to the petitioner. He stated that recommendation for age relaxation has been made on 13.6.2003 and the same is still awaited.

Learned counsel for the petitioner has also place reliance on the judgment of Apex Court in the case of Basudeo Tiwary vs. Sido Kanhu University and others, 1998 (8) SCC 194. The Hon'ble Supreme Court has as under:

"In order to arrive at a conclusion that an appointment is contrary to the provisions of the Act, statutes, rules or regulations, etc. a finding has to be recorded and unless such a finding is recorded, the termination cannot be made, but to arrive at such a conclusion necessarily an enquiry will have to be made as to whether such appointment was contrary to the provisions of the Act etc. If in a given case such exercise is absent, the condition precedent stands

unfulfilled. To arrive at such a finding necessarily enquiry will have to be held and in holding such an enquiry, the person whose appointment is under enquiry will have to be issued a notice. If notice is not given to him, then it is like playing Hamlet without the Prince of Denmark, that is , if the employee concerned

whose rights are affected is not given notice of such a proceeding and a conclusion is drawn in his absence, such a conclusion would not be just, fair or reasonable as notices by this Court in D.T.C. Mazdoor Sabha Case. In such an event, we have to held that in the provision, there is an implied requirement of hearing for the purpose of arriving at a conclusion that n appointment had been made contrary to the Act, statute , rule or regulations etc. and it is only on such a conclusion being drawn, the services of the person could be terminated without further notice. That is how Section 35 (3) in this case will have to be read.

Admittedly in this case, notice has not been given to the appellant before holding that his appointment is irregular or unauthorised and ordering termination of his service. Hence, the impugned order terminating the services of the appellant cannot be sustained."

In view of the aforesaid facts and circumstances order passed on 30.6.1998 by the respondents cannot be sustained.

Order dated 30.6.1998 reverting the petitioner to the post of Toll Moharir is, therefore, quashed. However, liberty is given to the respondents to pass afresh order after giving opportunity to the petitioner for hearing.

The writ petition is accordingly allowed. No order as to costs.

19.11.2003 **(Rajesh Tandon, J.)**
Dhyani